

REMARKS

Responsive to the requirement for restriction, applicant elects Group I, claims 1-4, with traverse.

The requirement is improper and should not be repeated, for the following reasons:

In a nutshell: The requirement relies on the assertion that the biomaterials of the present invention are known in the art. In fact, however, the claimed biomaterials are novel and unobvious. Therefore, the fundamental premise of the requirement for restriction is inaccurate.

In greater detail: The mere assertion that the biomaterials of the present invention are known in the art, directly violates both the rules of practice of the United States Patent and Trademark Office, and also the provisions of the Manual of Patent Examining Procedure.

As to the rules, 37 CFR §1.104(c)(2) clearly provides as follows:

In rejecting claims for want of novelty or for obviousness, the Examiner must cite the best references at his or her command.
(emphasis supplied)

The Examiner has not done this in the present application.

Turning now to MPEP §816, we see the requirement that:

The particular reasons relied on by the Examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given. (emphasis supplied)

The Examiner did not do this in the present case.

In the event that a requirement for restriction in better form is made in the future, let us point out in advance that, although it may be improved as to form, it is no better as to content. The reason for this is that all of the groups of claims are related by common patentable subject matter, namely, the new and unobvious biomaterial of the present invention. Thus, all of the groups are interconnected by a common patentable concept and hence are all examinable together.

In the absence of any compliance with the requirements for a proper restriction, it is believed that the requirement for restriction must be withdrawn and that all of the claims must be examined as to merit. Such is respectfully requested.

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The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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